

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Proposing rule making related to update of rules and providing an opportunity for public comment

The Labor Commissioner hereby proposes to amend Chapter 1, “Description of Organization and Procedures Before the Division,” Chapter 4, “Recording and Reporting Occupational Injuries and Illnesses,” Chapter 32, “Child Labor,” Chapter 38, “Employment Agency Licensing,” Chapter 61, “Administration of Iowa Code Chapter 88A,” Chapter 150, “Construction Contractor Registration,” Chapter 155, “Asbestos Removal and Encapsulation,” Chapter 156, “Bidder Preferences in Government Contracting,” and Chapter 177, “Mixed Martial Arts,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 88.5, 88A.3, 88B.3, 90A.7, 91.6, 91C.6, 92.8 and 94A.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 88, 88A, 88B, 90A, 91, 91C, 92 and 94A.

Purpose and Summary

The proposed items remove obsolete references; update addresses; amend language concerning hazardous occupations for youth; allow year-round amusement operators to apply for their annual permits in November; require amusement permit applications to be submitted 30 days, rather than 14 days, in advance; align rules with statutory language; facilitate the use of hoods for asbestos abatement workers; and amend the definitions of “construction” and “mixed martial arts.”

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commissioner for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 1.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commissioner no later than 4:30 p.m. on March 4, 2020. Comments should be directed to:

Kathleen Uehling
Division of Labor Services
150 Des Moines Street
Des Moines, Iowa 50309
Email: kathleen.uehling@iwd.iowa.gov

Public Hearing

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

March 4, 2020
9 a.m.

150 Des Moines Street
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Commissioner and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 1.3(2) as follows:

1.3(2) ~~Correspondence and payments may be mailed to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319.~~ The telephone number for the division is (515)242-5870. The division's office is located at 150 Des Moines Street, Des Moines, Iowa 50309. The division's website is www.iowadivisionoflabor.gov.

ITEM 2. Amend rule 875—1.15(22,91) as follows:

875—1.15(22,91) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may have a written statement of additions, dissents, or objections entered into a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of a record to alter the original copy or to expand the official record of any division proceeding. Written statements of additions, dissents, or objections shall be sent to the custodian or to the Labor Commissioner, ~~1000 E. Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309. Written statements of additions, dissents, or objections must be dated and signed and shall include the current address and telephone number of the requester or the requester's representative.

ITEM 3. Amend subrule 1.41(1) as follows:

1.41(1) General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the division will issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Division of Labor Services, Division Rules Coordinator, ~~1000 East Grand~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

ITEM 4. Amend subrule 1.43(4) as follows:

1.43(4) Written criticisms. Written criticisms of a rule may be mailed to Division of Labor Services, Division Rules Coordinator, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309. To constitute a criticism of a rule, the criticism must be in writing, state it is a criticism of a specific rule, state the rule number, and provide reasons for criticism of the rule. All written rule criticisms received will be kept for a period of five years.

ITEM 5. Amend subrule 1.52(3), introductory paragraph, as follows:

1.52(3) A petition for intervention shall be mailed to Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309. The petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be legible and must substantially conform to the following form:

ITEM 6. Amend rule 875—1.54(17A) as follows:

875—1.54(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be mailed to Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309.

ITEM 7. Amend subrule 1.55(2) as follows:

1.55(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Declaratory Orders Coordinator, Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the division.

ITEM 8. Amend subrule 1.75(4) as follows:

1.75(4) When filing is required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be mailed to the division at ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the division.

ITEM 9. Amend subrule 1.75(6) as follows:

1.75(6) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309, and to the names and addresses of the parties listed below by depositing the same in (state: a United States post office mailbox with correct postage properly affixed, state interoffice mail, courier).

(Date)

(Signature)

ITEM 10. Amend rule 875—1.102(17A,91), introductory paragraph, as follows:

875—1.102(17A,91) Petitions. If the petition for waiver or variance relates to a pending contested case, the petition shall be filed in the contested case proceeding. Other petitions must be mailed to Labor Commissioner, Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309. In either case, the petition shall include the following information where applicable:

ITEM 11. Amend paragraph **4.3(2)“c”** as follows:

c. Visiting ~~1000 E. Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa.

ITEM 12. Amend subrule 32.8(21) as follows:

32.8(21) Occupations deemed by the labor commissioner to be hazardous to life or limb as provided by Iowa Code section 92.8(21) Hazardous occupations prohibited by the labor commissioner include the following:

a. Occupations involved in the operation of power cutters on corn detasseling machines.

b. Occupations involved in the driving of power-driven detasseling machines ~~provided that unless~~ the driver has a valid driver's license or a certificate issued by the Federal Extension Service showing that the driver has completed a 4-H farm and machinery program.

This subrule is intended to implement Iowa Code section 92.8(21).

ITEM 13. Amend subrule 38.2(1) as follows:

38.2(1) Application. An application for a license must be made in writing to the commissioner ~~upon Form PEA-1(309-6164)~~ on the form provided by the commissioner. ~~The application form applicant shall be accompanied by two copies of~~ also complete and submit the employee-paid fee schedule ~~Form PEA-2(309-6164) form provided by the commissioner~~; \$75 nonrefundable fee; and all contract forms to be signed by an employee. The application shall also be accompanied by a surety company bond in the sum of \$30,000, to be approved by the commissioner and conditioned to pay any damages that may accrue to any person due to a wrongful act or violation of law on the part of the applicant in the conduct of business.

ITEM 14. Amend subrule 38.2(3) as follows:

38.2(3) Change in officers. A change in the name of any person required to be reported on the application under Iowa Code ~~Supplement~~ chapter 94A shall be forwarded to the commissioner within ten days of the change.

ITEM 15. Amend paragraph **38.8(2)“c”** as follows:

c. All contracts and fee schedules must clearly state that the agency is licensed by the labor commissioner and that inquiries may be made via mail to the Division of Labor Services, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309, or by telephone to (515)242-5870.

ITEM 16. Amend **875—Chapter 38**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ chapter 94A.

ITEM 17. Amend subrule 61.3(1) as follows:

61.3(1) Operating permit. No later than May 1 and at least ~~14~~ 30 days before operation begins each calendar year, the operator of covered equipment shall apply to the commissioner for an operating permit. Applications may be submitted in November for continuous operations. Application shall be made on a form provided by the commissioner. Each of the following shall be submitted with the completed operating permit application:

a. to g. No change.

ITEM 18. Amend rule **875—150.2(91C)**, definition of “Construction,” as follows:

“Construction” means new work, additions, alterations, reconstruction, installations, repairs and demolitions. Construction activities are generally administered or managed from a relatively fixed place of business, but the actual construction work is performed at one or more different sites which may be dispersed geographically. Examples of construction activities, adopted by reference, are in 871—23.82(96) for purposes of the Iowa employment security law. ~~For work on structures that are both located in an area that is subject to a disaster emergency proclamation pursuant to Iowa Code section 29C.6 and damaged by circumstances related to those that caused the disaster emergency proclamation, “construction” includes asbestos abatement.~~

ITEM 19. Amend subrule 155.6(1) as follows:

155.6(1) Application form. Except as noted in this subrule, the applicant must complete and submit the entire form provided by the division with the necessary attachments. Respirator fit tests and medical examinations must have occurred within the past 12 months. Only worker and contractor/supervisor license applicants must submit the ~~respirator fit test~~ respiratory protection and physician's certification forms. Photocopies of the forms shall not be accepted.

ITEM 20. Amend subrule 155.6(2) as follows:

155.6(2) Training. A certificate of appropriate training ~~from a course provider approved for asbestos training~~ as established by the U.S. Environmental Protection Agency must accompany all applications.

Applicants for a license must be trained by training providers other than themselves. Applicants who completed initial training under a prior set of applicable rules will not be required to take another initial training course if they complete all annual refresher courses.

ITEM 21. Amend subparagraph **155.6(11)“a”(1)** as follows:

(1) A copy of a certificate for training that was provided within the past 12 months ~~by a course provider approved~~ as established by the U.S. Environmental Protection Agency and that pertains to the work being performed;

ITEM 22. Amend subparagraph **155.6(11)“a”(3)** as follows:

(3) ~~Documentation~~ For a worker wearing or intending to wear a tight-fitting respirator, documentation of a respirator fit test consistent with 29 CFR 1910.134 within the past 12 months;

ITEM 23. Amend subparagraph **155.6(11)“b”(1)** as follows:

(1) A copy of a certificate for training ~~by a course provider approved~~ as established by the U.S. Environmental Protection Agency and that pertains to the work being performed;

ITEM 24. Amend subrule 156.4(1) as follows:

156.4(1) Complaints. Any person with information regarding a violation of the Act may submit a written complaint to the commissioner. Any complaint must provide the information required pursuant to subrule 156.4(2) or as much of such information as is reasonably practicable under the circumstances. The completed written complaint form shall be mailed to the commissioner at Labor Services Division, ~~1000 East Grand Avenue~~ 150 Des Moines Street, Des Moines, Iowa ~~50319~~ 50309.

ITEM 25. Amend rule 875—177.1(90A), introductory paragraph, as follows:

875—177.1(90A) Definitions. The definitions contained in Iowa Code chapter 90A ~~as amended by 2010 Iowa Acts, Senate File 2286,~~ and the definitions in this rule shall apply to this chapter.

ITEM 26. Amend rule **875—177.1(90A)**, definition of “Mixed martial arts,” as follows:

“*Mixed martial arts*” means a style of athletic contest that includes a combination of combative skills from ~~the sports of boxing, wrestling, kickboxing and judo~~ different disciplines of the martial arts, including, without limitation, grappling, kicking and striking.